



State Contracting Reform Task Force  
Final Report  
September 1, 2004

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Submitted by:

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### Acknowledgements

The co-chairs would like to acknowledge the dedication and commitment of the task force and work group members, who placed other critical priorities aside to focus their energy on this project. In addition to reviewing documents, drafting reports, seeking input and listening, each of them has had to step back, reflect and challenge their assumptions. We also would like to thank the members of the public who took the time to think through the issues and speak or write to us. Their input was catalytic.

## INTRODUCTION

Governor M. Jodi Rell announced the creation of a task force on state contracting reforms on July 8, 2004. As a bi-partisan effort, the task force included legislators and representatives from the private sector as well as heads of state agencies involved in the contracting process. With the unprecedented events of the past few years, our charge was clear:

“...to ensure our contracting processes reflect the highest standards of integrity, are clean and consistent and are conducted in the most efficient manner possible to enable state agencies to deliver programs and serve our citizens.”

Our goal was to analyze the state’s vulnerabilities in the selection and procurement processes to avoid improprieties, favoritism, unfair practices or ethical lapses in the future, or the appearance of such. The entire scope of state contracting and procurement was to be examined, including the awarding of contracts for construction, leases, personal services, property management and the purchase of goods and equipment.

### THEMES

Governor Rell directed us to consider the following themes in our deliberations:

- Adopting clear and consistent procedures for evaluation of bids and contractor performance.
- Requiring agencies to maintain complete, clear and open records of the contractor selection process, including written justification for decisions by those involved in the selection process.
- Establishing a binding and enforceable code of ethics for all those conducting business with the state.
- Authorizing the suspension of contractors engaged in wrong doing related to existing state contracts.
- Establishing a permanent oversight board for all major state contracts to ensure consistency and adherence to all contracting requirements.
- Requiring all contractors, not only those with large state contracts, to adhere to laws concerning disclosure of gifts to state employees.
- Reviewing the role of the State Properties Review Board to ensure appropriate oversight of all state leases.
- Implementing provisions of the Governor’s Executive Order #1 and recent contracting reform legislation.
- Enacting a False Claims Act, modeled after the federal statute, providing for damages and penalties against contractors who defraud the state.

### ESTABLISHING WORK GROUPS

With this broad mandate and a deadline of September 1, 2004, we created seven work groups. Each work group consisted of a cross section of agencies involved with the selection process. User agencies involved in the process or recipients of the services were invited to provide input on their experience with the process, identifying strengths as well as areas of risk or areas open to manipulation.

The work groups reviewed each process and many documents through an ethical lens, integrating five critical values.

1. *Level playing field*

This means that qualified contractors seeking to do business with the state have equal access to work within our system. No one firm can be given an advantage or an edge because of special access to information or knowledge. Our processes must be set up to ensure this type of equality and access to state work.

2. *Transparency*

The contract award process must be clear, understandable, and open to public scrutiny. From a contractor's perspective, ease of navigation through the state contracting system is the goal. Lack of transparency prevents both our suppliers and the recipients of our services from actively participating in government and from raising questions or protesting unfair or ill-advised decisions. A lack of transparency can also conceal graft or favoritism. Transparency will allow citizens to understand how government decisions are made and may also reduce the challenges to those decisions, thereby improving efficiency.<sup>1</sup>

3. *Best practices*

Each of our industries has industry-specific best practices. Any changes considered should reflect the current thinking in our respective fields as well as enhanced use of technology as a communication and decision-making vehicle.

4. *Checks and balances*

Many of our current procedures emanated piecemeal, often from a problem and a corresponding effort to rectify it by inserting sufficient checks and balances on an individual's or agency's control. This can have the effect of lengthening a process to ensure all bases are covered, including steps involving partner state agencies as well as watchdog agencies. Adding layers of approvals and bureaucracy may not be the answer and may not reduce the risk of improprieties or scandals. This assignment provides the opportunity to assess these and change, or insert, such balance where necessary.

5. *Service*

Clearly, we do not want to make our processes so burdensome or cumbersome that our performance and service to the public suffers. A balance is required.

## OPEN GOVERNMENT

In an effort to embody our goal of open, transparent and accessible government, we also solicited input from a wide range of people offering differing perspectives. A public hearing was conducted on August 2 and public testimony was received from 36 participants. In addition, members of the public were invited to attend, observe and/or comment during any of the work group sessions. Several of the work groups supplemented this effort by coordinating their own public forums where they heard from vendors/suppliers, representatives from professional organizations, state agencies, and/or members of public.

We expanded the Governor's web site to include a special section dedicated to providing updates of the work of this task force.<sup>2</sup> The site includes the project plan, the Governor's comments, identification of

<sup>1</sup> Excerpt from Construction Procedures report.

<sup>2</sup> <http://www.ct.gov/governorrell/site/>

work group members, meeting schedules and meeting minutes, where available. A statewide library of documents was also created, designed to help members of the task force and the public learn about current state procurement and contracting operations. The library also includes a section on reports, studies, benchmarking sources and links to other pertinent sites. It is expected this will continue to grow as more documents and resources become available.

From this location on the Governor's web site, we also established a dedicated e-mail address to allow any person to provide us with input electronically. Inquiries or comments were received and acknowledged by the co-chairs, Commissioner James Fleming and Senator Donald DeFronzo.

Included in the site are the following items

- Governor Rell's July 8, 2004 and July 19, 2004 press releases establishing the task force
  - Project plan and timeline
  - Project matrix of work group responsibilities
  - Agenda and minutes for the Task Force meetings on July 26, 2004 and August 25, 2004
  - July 26, 2004 slide presentation
  - Work group membership
  - Testimony from August 2, 2004 public hearing
  - Executive Order # 1 enacted on July 1, 2004 establishing the Special Council on Ethics and outlining several ethics initiatives
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## STATE CONTRACTING REFORM TASK FORCE FINAL REPORT EXECUTIVE SUMMARY

In approaching this assignment, the Task Force made an effort to take a broad view of the existing state contracting system to identify its deficiencies, inconsistencies and vulnerabilities. We attempted to acquire a common understanding of the current system to determine to what extent there might be systemic problems that enable abuse. What we found was a relatively benign procurement process rooted in sound principles, but varying widely in process and procedure. This system is controlled by a plethora of inconsistent statutes that delineate roles, responsibilities and authority, which have created a substantial lack of uniformity, numerous exceptions and a significant opportunity for ethical transgression. Coupled with a lack of central coordination, this fragmented system lends itself to administrative inefficiency, political intervention and abuse.

As a result, the Task Force has focused its recommendations on establishing a strong and proactive structure to implement uniform procedures and practices, elevating the state's commitment to clear ethical standards and conduct, improving professional development opportunities for state employees, and strengthening the state's enforcement, investigatory and accountability capabilities. These are outlined below.

The work and recommendations of the Task Force represent a consensus formed around recognition of the need to improve Connecticut's procurement system in a comprehensive manner. While recommendations advanced by the Task Force will require ongoing development prior to the 2005 legislative session as addressed in Recommendation # 7, they do provide a framework for meaningful change and a substantially improved procurement process.

### **RECOMMENDATION # 1: Adopt a statewide uniform procurement and contract code and create a Contract Standards and Properties Review Board to administer this.**

- Develop a new unified contracting statute that consolidates existing statutes and regulations
- Create a centralized body to implement this
- Develop uniform statewide contracting standards for contract scope development, evaluations of bids and proposals, contractor evaluation and disciplinary action, appeals and protests, Small and Minority Business Enterprise participation, privatization proposals, etc. for all entities receiving public funds, including all government agencies
- Audit compliance with the standards
- Freeze, or void, contracts where improprieties are found
- Expand oversight of all state leases and conveyance of property

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### **RECOMMENDATION # 2: Elevate the state's commitment to ethical conduct for public officials, state employees and for contractors.**

- Prohibit contractors from providing gifts over \$ 10 to public officials and state employees, including services as well as gifts for major life events
- Prohibit contractors from providing meals to public officials and state employees
- Mandate employees and contractors report gifts offered or received
- Restrict business relationships between state officials and contractors
- Hold contractors and state managers accountable for compliance and for promoting ethical behavior
- Disclose contractor campaign contributions, including contribution to political action committees and party committees
- Enhance enforcement jurisdiction of the Ethics Commission

- Afford judges discretionary authority to revoke all or part of state pension benefits for serious violations of the Ethics Code
  - Maintain complete and open records of contractor selection processes
- 

**RECOMMENDATION # 3: Improve professional development opportunities for state employees**

- Develop and implement a training program for procurement professionals
  - In conjunction with the Ethics Commission, coordinate ethics training for all parties, including: the provisions of the Ethics code; restrictions on behavior; and penalties for non-compliance
  - Track best practices in the procurement area and provide technical assistance to state entities and municipalities in implementing contract standards
- 

**RECOMMENDATION # 4: Adopt a False Claims Act with Chief State's Attorney given full subpoena power and shared Civil Investigative Demand (CID) power for the Attorney General in conjunction with the Contract Standards and Properties Review Board**

- Enact a false claims act modeled after the Federal False Claims Act and other states
  - Provide for coordination between the Attorney General and the Chief State's Attorney in the review of false claims allegations
  - Delineate protections for those who bring whistleblower complaints
  - Provide the new Board with the authority to issue a CID on behalf of the Attorney General to investigate allegations of false claims
  - Provide the chief state's attorney with subpoena power to investigate allegations
  - Permit the Attorney General and the Chief State's Attorney to conduct investigations into whistleblower complaints with the same power and authority, including subpoena power
  - Amend the Department of Administrative Services prequalification system to include the requirement that applicants disclose any suspensions, disciplinary actions and/or civil actions taken against the applicant by any government entity
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**RECOMMENDATION #5: Implement a single purchasing portal for all state bid and contact information**

- Develop a single statewide portal for posting all contracting opportunities for state agencies and municipalities
  - Mandate state agencies post relevant information
  - Post manuals, procedures, and contract award information
- 

**RECOMMENDATION #6: Restrict or eliminate the legislature's authority to enact special legislation**

- Do not enact special legislation, unless circumstances absolutely warrant such action
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**RECOMMENDATION # 7: Convene a follow-up work group to develop a detailed plan for submittal to the legislature in January 2005**

- Conduct a comprehensive review of all existing state procurement and contracting statutes
- Draft a new unified state procurement and contracting statute
- Prepare a status report for the Task Force for September, 2005

## Recommendation # 1:

## ADOPT A UNIFORM PROCUREMENT & CONTRACT CODE AND CREATE A CONTRACT STANDARDS & PROPERTIES REVIEW BOARD

### Part I: ADOPT A UNIFORM PROCUREMENT & CONTRACT CODE

#### BACKGROUND

The Connecticut General Statutes mandate differing degrees of rules, regulations, standards, and oversight for the various state agencies, offices, institutions, committees, and municipalities that have the statutory responsibility for bidding and selections, and the resulting contracts. In addition, various state agencies have procedures that have evolved over the years and are often not set forth in statutes or regulations. Consequently, there are no universal minimum statutory requirements applicable to all contracting entities across the state for the following processes and procedures:

- contract solicitations
- consultant and contractor selection
- contract oversight
- bidding and awards
- appeal processes
- process turn around time duration

As the Construction Procedures work group states, there are multiple construction-related statutes with frequent and well-intended additions, revisions, deletions, and exemptions that produce a patchwork of reforms to specific statutes without addressing the need for a global fix.<sup>3</sup> The Procurement work group also noted that purchasing procedures such as bid posting, bidder notification, documents and evaluation procedures vary by agency. This inconsistency causes confusion and makes it difficult for vendors to submit a successful bid response.<sup>4</sup> The Property Management work group indicates that the lack of a standard method of contracting with property management firms can make it difficult for the state to track this data. Different contract types for providing the same service may lead to discrepancies that could be to the state's disadvantage, particularly since many of the same firms have contracts with many different agencies.<sup>5</sup> The need for templates for repetitive types of contracts is echoed in other reports.

The Personal Service Agreements work group noted the lack of such standardization wastes time and staff resources, causes delays, limits productivity, and drives up costs. Moreover, the strength of contract language is tested through use, and the unknown strength of differing contracts increases the risks to the agency and the State. Standardization can also expedite the review and approval of contracts, thereby making the system more efficient. With a more efficient system in place, agencies may be less likely to look for loopholes, alternative procurement mechanisms, or "carve outs" as a means to avoid using PSAs (when required).<sup>6</sup> It also thwarts our efforts to have a transparent, easily-understood process.

<sup>3</sup> See Construction Procedures report.

<sup>4</sup> See Procurement report.

<sup>5</sup> See Property Management report.

<sup>6</sup> See Personal Service Agreements report.

Despite this, it is clear that many agencies have made a significant effort in their respective areas to revise their procedures to reflect best practices. For example, the Construction Procedures work group located a summary of state procurement statutes compiled by the American Council of Engineering Companies.<sup>7</sup> This document suggests that the Department of Public Works' current practices for contracting with design professionals are similar to the practices in other states. During the last two years, Office of Policy and Management staff have been working on a major update and revision of their draft guidelines, *Personal Service Agreements: Standards and Procedures*; they recently sought input from state agencies and intend to issue this in the near future.<sup>8</sup>

The Task Force believes the next step is to achieve statewide consistency. The following language was prepared by the State of Oregon in enacting a Public Contracting Code.<sup>9</sup> It reflects the Task Force's thinking regarding the need and rationale to adopt such a code in Connecticut.

A sound and responsive public contracting system should:

- (1) Simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards
- (2) Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government
- (3) Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state
- (4) Clearly identify rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds
- (5) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, . . . meaningful competition may be obtained by evaluation of performance factors as well as pricing in arriving at best value
- (6) Provide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted

## MODELS

The Construction Procedures work group conducted some research and located models, such as the American Bar Association (ABA) model procurement code for state and local governments that is used by many state and local government purchasing professionals.<sup>10</sup> It addresses the above issues and more.

The ABA model contains 12 articles that cover broad categories of the contracting process. Articles 1-10 cover basic policies for procurement of supplies, services, construction; management & disposal of

<sup>7</sup> *Summary of State Procurement Statutes*, American Council of Engineering Companies (ACEC), December 2001.

<sup>8</sup> See *Personal Service Agreements* report.

<sup>9</sup> [irmd.das.state.or.us/DAS/PFSS/SPO/docs/ORS\\_Cross\\_Map%20279.005%20to%20279.116.doc](http://irmd.das.state.or.us/DAS/PFSS/SPO/docs/ORS_Cross_Map%20279.005%20to%20279.116.doc), Matrix of expansion of ABA MPC approach, State of Oregon.

<sup>10</sup> <http://www.acec.org/advocacy/doc/mpcfinal.doc>, *Steering Committee Final Draft-- The Model Procurement Code Revision Project, A Joint Program to Improve State and Local Procurement*, The American Bar Association Section for Public Contract Law and Section of State and Local Government Law, April 2000.

supplies; and legal remedies. Article 11 provides socioeconomic policies and administrative procedures for assisting small and disadvantaged businesses. Article 12 establishes ethics standards with sanctions for public officials and contractors, applicable to all participants in the procurement process; these include conflicts of interest, gratuities and kickbacks, contingent fees and misuse of confidential information. Many of these are directly relevant to the Task Force recommendations.

The model also includes many of the basic tenets Connecticut state agencies are already following, such as using competitive sealed bidding as the preferred method for contracting but authorizing competitive sealed proposals for designated types of services. There are provisions to address some areas of potential vulnerability, such as requirements for developing, monitoring and using specifications to maximize competition, competitive awards for architects and engineers, a mechanism for resolution of disputes in regard to solicitation and awards, contract performance, debarment or suspension. Similar principles are embodied in the Federal Acquisition Regulation (FAR) in great detail and many states have adopted this model.<sup>11</sup>

These models are designed to foster open and fair competition. They provide for flexibility within certain parameters and they address multiple methods of selection, such as competitive sealed bids, competitive requests for proposals, small purchases, emergency procurements, architecture/engineering/ consulting services and special procurements. They generally outline steps, approvals, guidance for time frames, ethics provisions, Small and Minority Business Enterprise (SBE/MBE) participation, compliance oversight and enforcement; some include forms as well.

## Part I RECOMMENDATION

The Task Force recommends the following:

- A follow-up work group will conduct a comprehensive review of all existing state procurement and contract statutes
- This group will explore the feasibility of adopting one of the existing models, or a hybrid, as a framework for state contracts;
- They will develop a new, unified *State Procurement & Contracting Statute* that consolidates the existing statutes. It will address all types of selections, procurements, and resulting contracts applicable to all state entities and municipalities and it will meet the objectives of consistency, transparency, expediency, vendor compliance and accountability among all state agencies. This would include, but are not limited to, the following:
  1. state leases and property transfers
  2. privatization proposals
  3. major construction bidding and awards contracts
  4. formal consultant contracts
  5. any proposed fast track project
  6. emergency contracts
  7. purchases of services through the personal service agreement process currently administered by Office of Policy and Management, including property management contracts and other repetitive contracts
  8. purchase of goods, services and equipment administered by the Department of Administrative Service

<sup>11</sup> <http://www.arnet.gov/far/>, Federal Acquisition Regulation, General Services Administration, Dept. of Defense, National Aeronautics and Space Administration, Sep 2001.

- The statute will apply to overall expenditures of public funds, irrespective of their source, with a few exceptions, such as certain federal funding situations, grants or contracts between the state and its political subdivisions or other government bodies. Further research is required to determine the applicability of exemptions for Connecticut state agencies
- This effort could begin immediately upon approval of this recommendation by convening a work group for this express purpose. The goal would be completion of the review by January 2005 to enable the consideration of new legislation.

## Part II: CREATE A CONTRACT STANDARDS & PROPERTIES REVIEW BOARD

### BACKGROUND

The Task Force believes that a single body must be dedicated to the development and administration of a unified procurement code. Articles 1 and 2 in the American Bar Association code, for example, set forth organizational concepts for establishing procurement policy and conducting operations, provide exemptions from central procurement, authorize creation of a Procurement Advisory Council to suggest reforms and improvements and the creation of a Procurement Institute to train personnel. This parallels several of the work groups' recommendations concern the establishment of such a body.

The work groups' perception of the role of such a body varied greatly. However, on one point they were consistent: they shared a similar concern that creating a board that would approve all major contracts would create unnecessary and excessive delays. This, in turn, would diminish service to customers and clients. There are other repercussions from a lengthened process, including increased pressure for client state agencies to circumvent or seek an exemption from what they perceive as a burdensome process. All the work groups indicated, and the Task Force concurred, that integrity and transparency must be built into the selection system from the outset and that problems require a thoughtful analysis and systemic solutions.

The Task Force did not see these interventions as mutually exclusive, as outlined below in our recommendations.

### Part II RECOMMENDATION

The Task Force recommends the following:

#### *Membership*

- The proposed Contract Standards and Properties Review Board (CSPRB) shall report directly to the Governor and the Legislature;
- The CSPRB should be comprised of executive and legislatively appointed members. The chairperson of the board would be nominated by the Governor and confirmed by one house of the legislature as is the current process for confirmation of a commissioner. The Executive Director is an ex-officio member of the Board;
- Board members shall serve staggered terms to ensure continuity of membership;
- The State Properties Review Board (SPRB) will be reconstituted to the CSPRB;
- All members will have substantial knowledge and demonstrated experience with (a) procurement; (b) request for proposals; (c) contract negotiation; (d) contract drafting; (e) contract law or business law; (f) business insurance and bonding; (g) contract risk assessment; (h) business ethics; and (i) federal and state statutes, policies, and regulations <sup>12</sup> and (j) supplier diversity and small business development.

<sup>12</sup> See Personal Service Agreements report.

### *Authority*

- The Board's jurisdiction includes all recipients of public funds, including state agencies, quasi-public agencies and all units of the state higher education system as well as municipalities;
- Exceptions or "carve outs" (that is, agencies excluded from current state agency processes such as DOIT, DOT, DPW, UConn) will be reviewed to determine the feasibility of continuing that status;
- The Board has the authority to promulgate regulations, consider and decide matters of policy, audit and monitor implementation of its regulations, policies or guidelines;
- The Board is empowered to restrict an agency's contracting limits if it finds that a lack of adherence to approved procedures exists until such time as the agency implements an approved corrective action plan;
- The Board should also have "extraordinary authority" to intervene in, suspend or review any contract/procurement process undertaken by any state agency or any recipient of state funds when presented with a credible and reasonable cause to do so. (This would entail a new notification from the State Auditors or the Office of the Attorney General to the Director of a credible whistleblower allegation involving an "in process" procurement and enabling an immediate intervention); and
- The Board should also have the authority to refer matters to the prosecutor when it finds that laws have been broken; and
- With the exception of the prior approval authority already encompassed in the SPRB responsibilities (plus those approvals we are recommending adding as a result of this initiative), the Board will not exercise authority over the administration of any particular contract.

### *Duties of the Board*

The Task Force envisions the CSPRB shall have oversight of the following:

#### *Statewide Properties Review Duties*

- The responsibilities of the SPRB, whose responsibilities were expanded in PA 04-141 to include review of "fast track" projects, will be further expanded and transferred to the new CSPRB as outlined below and the board will subsume both their current, and the expanded, responsibilities;
- The Task Force supports two recommendations offered by the Leasing work group: (1) that the state's real estate transactions should be centralized so that the agencies that are best equipped to provide the necessary expertise administer the transactions (DPW, DOT, and DEP). This is needed to ensure that the state is entering into transactions that meet the same fiscal, ethical and legal standards. (2) That all of the state's real estate transactions with a few exceptions should be subject to review by the SPRB. The SPRB was created as an independent body with individuals appointed because of their expertise in real estate, business and related disciplines. Subjecting all state realty transactions to SPRB will provide a base line for uniform review of all transactions;
- Therefore, with the exception of conveyances under \$ 5000 and condemnations, the new CSPRB will review and approve /disapprove all of the state's real estate transactions (leasing and conveyance of property) where there is no independent oversight or review by third parties such as the Federal Highway Administration,<sup>13</sup> consulting services contracts, and any proposed "fast track" projects for any entity receiving public funds; and

<sup>13</sup> See Leasing report and Investigation, Enforcement and Compliance report.



- These expansions will require statutory amendments, along with resources.<sup>14</sup>

### *Statewide Standards Duties*

- Develop statewide standards that apply to all state contracting and procurement processes addressed by this Task Force, including but not limited to, state leases and property transfers, privatization contracts, construction bidding and awards contracts, consultant services contracts, emergency contracts, purchases of goods, services or equipment under the Department of Administrative Services, and purchases of services via a Personal Service Agreement, under the Office of Policy and Management;
- Incorporate guidelines for protest resolution at the agency level into the standards;
- Create administrative rules and minimum standards so that they can be easily modified when a new problem arises, based upon the new procurement and contracting statute, for all types of selections and resulting contracts, and modeled after the Federal Acquisition Regulations (FAR);
- Consider including prequalification and registration or licensing of selected types of contractors, such as commercial property management firms;<sup>15</sup>
- Promulgate regulations, where required, to carry out the provisions of the model procurement code;
- Produce a user-friendly, how to manual, called the *State Procurement & Contracting Manual* that outlines the rules, regulations, signing authority and standards for all types of selections and resulting contracts. Each state agency should develop a state procurement and contracting manual following a standard outline as developed by the Board. The Board should develop a standardized format, relying on existing formats that work well;
- Develop a monitoring system to ensure agencies are using state contracts and increase agency accountability to do so;
- Develop a process to hold contractors accountable for providing the proper goods and services at the correct prices, in the manner prescribed in their contract. The process should include penalties for non-compliant vendors;
- Ensure state contracting and procurement standards include a systematic approach to maximize the utilization of SBE/MBE's in state contracting. Incorporate successful methods employed by state agencies and include in training programs for procurement professionals;
- Develop standards to assess privatization proposals. This includes creating a procedure containing all appropriate steps and reviews required for privatization proposals including the approval process. This office will develop the process identifying and including all analytical steps, relevant parties and evaluation factors;<sup>16</sup>
- Initiate and maintain a continuous improvement process for all agencies of state government based on information obtained through reviews and audits. Consider new purchasing procedures to increase openness of the buying process, such as reverse auctions;
- Establish an advisory group to include Executive, Legislative and Judicial Branch, Higher Education and municipal purchasing personnel to share ideas, discuss issues, institute best practices and

<sup>14</sup> See Leasing report and Investigation, Enforcement and Compliance report.

<sup>15</sup> See Property Management report.

<sup>16</sup> See Construction Procedures report and Procurement report.

continually search for improved procurement methods, for instance, offer vendor debriefings to review bids and offer suggestions to help vendors achieve success with future bids;<sup>17</sup>

#### *Audit Duties*

- Perform periodic audits on state entities and municipalities for conformance with CSPRB contracting rules, regulations and standards;
- As described under the *Authority* section, may restrict an agency's contracting limits, exert "extraordinary authority" to intervene when there is cause to do so, and refer matters to the prosecutor when it finds that laws have been broken; and
- With the exceptions of the review and approvals noted under the *Statewide Properties Review Duties* section, the new CSPRB should not have centralized contract approval authority to scrutinize and check all privatization contracts, major construction contracts, emergency contracts, Personal Service Agreements and purchases/procurements of goods and services. The approval authority of contracts should remain within the individual state agencies, offices, institutions, committees, and municipalities that have statutory authority for selections, procurements and the resulting contracts.<sup>18</sup>

#### *Protest Review and Appeal Duties*

- Implement a review mechanism to resolve appeals not resolved at the agency level. Awarding agencies should first attempt to resolve protests to a procurement or contracting action through the standard process, but when vendors are not satisfied, the Board is an additional resource to seek relief;<sup>19</sup> and
- Ensure this appeal process does not delay or interrupt the contracting process. Appeals, if valid, may be acknowledged with some form of compensation. This is an area for further discussion.

#### *Duties of the Training Institute (Addressed in Recommendation # 3)*

#### *Central web site (Addressed in Recommendation # 5)*

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<sup>17</sup> See Procurement report.

<sup>18</sup> See Construction Procedures report.

<sup>19</sup> See Procurement report.

## Recommendation # 2:

**ELEVATE THE STATE'S COMMITMENT TO ETHICAL CONDUCT<sup>20</sup>****BACKGROUND**

The Ethics and Integrity work group conducted an assessment of areas of vulnerability and cited five issues to address: Disclosure, Culture Shift, Contractor Accountability, Deterrence and Awareness. The first concerns the public's lack of confidence in the way the State awards its contracts and the need for disclosure. There is a belief that public and private individuals have abused the public trust to enrich themselves. The actions of these individuals have created the appearance that contracts are not awarded in a fair and open process, and that contractors must "pay to play." Because the decision-making is not open, the public is (a) not certain about the potential and actual conflict of interests of those state employees and public officials involved in the process; (b) suspicious of financial benefits that contractors and potential contractors may bestow on state employees and public officials; and (c) concerned about the influence that campaign contributions may have on elected public officials which in turn exert influence on decision-makers in the contracting process. Their recommendations for improvements center on the need to make the entire contract process more transparent.

The second issue concerns the need for a culture shift. Various enforcement authorities, both state and federal, have been investigating and/or found violations of public officials and/or state employees abusing their public positions. There is an appearance that state employees and public officials use their positions to personally benefit from their professional involvement with state contractors; the public is not confident that state employees and public officials act in the best interests of the taxpayers. There is a perceived lack of accountability by senior administrators. Ethical behavior is not highlighted or rewarded. The current Code of Ethics does not address ethics accountability and is not restrictive enough regarding relationships between employees and contractors.

Third, the contractors offer gifts, services and other benefits to state employees, which perpetuates the problem. In general, those doing business with or seeking to do business with the state do not understand the existing restrictions and prohibitions regarding the acceptance of gifts and services by state employees and public officials. There is no government organization responsible for educating those entities doing or seeking to do business with the state regarding the gift limitations. Furthermore, no standards exist that apply to those entities.

The fourth area addresses the need for deterrence. Civil penalties are assessed for violations of the Code of Ethics. Current financial penalties are not substantial enough to act as a deterrent. Civil penalties are too low. There are no consequences for failure to comply with certain contracting procedures.

The fifth and final area of concern is the need for education. In general, state employees and public officials and those doing business with or seeking to do business with the state are not aware of the ethical rules applicable to the workplace. They are not aware of the penalties for violations. There is a lack of consistent and continuous communication regarding the application of the Ethics Code. There is confusion as to the proper application of the Code of Ethics. There is no standardized training provided.

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<sup>20</sup> See Ethics and Integrity report.

## RECOMMENDATION

Certain actions are prohibited in some of the recommendations below. Until such prohibitions are in effect, parties are required to disclose such actions. The Task Force recommends the following:

### *Disclosure:*

#### Contractor Campaign Contribution and Gift Reporting

- The gift affidavits that are currently filed by potential contractors, as part of the RFP process, must also include a list of all campaign contributions, including contributions to political action committees and party committees. The Task Force recommends the prohibition of gifts over \$ 10 including services as well as gifts for major life events. Contractors should also be prohibited from providing meals to public officials and state employees. Until such prohibitions are in effect, the affidavit should also include a listing of all meals provided, including all meals that are subject to the gift exemptions (that is, meals valued over \$10 but under \$50). Thereafter, the successful contractor must file periodic reports detailing such gifts and contributions that were made subsequent to the initial disclosure. Such reports will be filed during each year of the term of the contract, as well as one final report a year thereafter; and
- Consider lowering the affidavit filing threshold for contractors.

#### Public Official and State Employee Gift and Meeting Reporting

- State employees and public officials substantially involved in the contract award or negotiations should file a financial disclosure statement with their agency to ensure that there is no possibility of financial gain or conflict of interest as a result of participating in the contract award; and
- State employees and public officials involved in the contract award or negotiations must file an affidavit disclosing any gifts offered over \$ 10 and/or received (including meals), their communications, and meetings held with potential vendors. This is an area for further discussion.

#### Lobbyist Disclosure of Activities

- Administrative lobbyists should include on their lobbyist financial disclosure reports, a list of the agencies they lobby, as well as the subject matter of the administrative lobbying activity (including contract bids).

#### State Agency Contract Bid and Award Records

- State agencies need to maintain complete and open records of the process used to award a contract, including the agenda, list of participants, and minutes of all meetings. The selection panel should have established written criteria for the selection process. After the award is made, the selection panel should have available, written documentation explaining the rankings and reasons for selecting the successful bidder, as well as an explanation of why the unsuccessful bidder was not selected. Such records shall be open to disclosure under the Freedom of Information Act;
- State agencies should keep a record of any contact with individuals or entities involved in the Request for Proposal (RFP) process, including the creation and writing of the RFP and the specifications, as well as the name of any individual that contacts the agency in an attempt to influence the procurement process. Such record shall be open to disclosure under the Freedom of Information Act; and
- State agencies should institute procedures to ensure that no contractor or potential contractor should be advantaged by receiving information that is not available to (or is not provided to) all other competitors.

*Culture shift:*

Accountability for State Managers

- The State Code of Ethics should provide consequences for those who counsel, authorize or otherwise sanction violations of the Ethics Code. (See Proposed House Bill 5156-2003 legislative session);<sup>21</sup>
- The State Code of Ethics should require senior management to report suspected violations of the Ethics Code to the State Ethics Commission;
- Promoting ethical behavior in the workplace should be an important criterion in a manager's annual evaluation and an essential factor to qualify for receiving merit increases and promotions;
- Exemplary "ethical role models" should be featured in agency newsletters and public ceremonies;
- Managers must ensure that all employees they supervise understand the ethics and contracting rules; and
- Managers must strive to maintain a workplace environment that encourages discussion of ethics issues without fear of reprisal and must fully support any ethics investigations when called upon.

Guidelines to Restrict Relationships between State Officials and Contractors

- The post-employment restrictions should be expanded to former public officials/state employees who negotiate a covered contract or agreement but resign before it is signed. These individuals should be prohibited from taking any job with the contractor within one year of resigning from state service if they resign less than one year after the contract is signed or they stopped participating in the negotiations. Quasi-public agency directors and members should also be prohibited from seeking or taking any job with the contractor within one year after they cease substantial participation in the negotiations or the contract is signed;
- State agencies should be prohibited from requesting "gifts to the state" from contractors currently seeking to do business with the agency;
- State employees should be prohibited from hiring or doing business with a person or business that holds a contract with the employee's state agency;<sup>22</sup>
- State employees and public officials should not accept any meals from any person currently doing business with or seeking to do business with the employee's state agency. (Currently, the gift law allows meals up to \$50 per person per calendar year)
- All contracts should contain a clause which states that the contractor is aware of, understands, and agrees to comply with the State Code of Ethics, the Business Code of Ethics, and understands that failure to comply can result in termination of the contract. Contractors will be responsible for reimbursing the state for any costs incurred by the state as a result of such termination, delay in completion of the project, and/or the necessity to hire an alternate contractor

<sup>21</sup> <http://www.cga.state.ct.us/2003/tob/h/2003HB-05156-R00-HB.htm>

<sup>22</sup> Many state contracts include retaile-based suppliers, such as a car dealership or a home improvement store, or companies that supply services, such as landscaping or moving. This language shall be further qualified.

*Heighten contractor accountability:*

## Develop a Code of Ethics for State Contractors

- Prohibit those doing business or seeking to do business with the state from providing gifts, including services and other benefits (as defined in the State Code of Ethics for Public Officials) and for paying for meals incident to meetings held with state employees and public officials. This gift prohibition should be extended to certain family members (for example, spouse, dependent children);
- Require contractors doing business with the state to file periodic reports listing all "gifts to the state", meals, or other benefits provided to state employees and public officials;
- Prohibit contractors from hiring state employees and public officials in violation of the state post-employment rules;
- Prohibit contractors and potential contractors from offering employment to certain family members of state employees and public officials who are in a position to influence a contract award;
- Prohibit contractors from offering outside employment to state employees and public officials which would result in such officials or employees being in violation of the State Ethics Code (that is, such outside employment would be a conflict with their current state employment);
- Consider prohibiting solicitation and donation of campaign contributions by owners and majority shareholders of firms who have, or are seeking to obtain, large state contracts, to candidates for elective office that awards the contract. Consider a limited ban from lobbyists;
- Before the award of a contract, preclude a contractor from soliciting or obtaining from any person any proprietary or source selection information not available to all, regarding the contract award;
- Require contractors to disclose who, if anyone, will receive compensation as a result of the contract award or is being paid to help obtain the contract award;
- General contractors should ensure that its subcontractors are aware of and comply with the Code;
- Authorize the State Ethics Commission to enforce the provisions of Code of Ethics for State Contractors; and
- Require contractors to report to the proper enforcement authority, state employees and public officials who solicit any gifts or rewards from contractors.

## Contractor Education Campaign

- Training and information regarding the Code of Ethics, as well as the contracting procedures, should be provided to those doing business with or seeking to do business with the State; and
- Entities seeking to obtain state contracts should be advised of the law regarding public disclosure of information so that they understand, in advance, what information submitted will be available for public inspection.

*Deterrence:*

## Provide Consequences for Not Complying with Procedures

- If affidavits are not filled out properly, the contract should not be awarded until they are complete;
- A contractor who violates the State Ethics Code may be barred for a time from bidding on future state contracts; and

- Contractors who hire former state employees in violation of the post-state employment rules should be subject to severe penalties. For example, the contractor may be fined in an amount equal to the value of the state contract the former employee was involved in; the contractor may be excluded from future bid opportunities.

#### Provide Stiffer Penalties and Enforcement Mechanisms

- Contractors must agree to submit to the jurisdiction of the state, including state enforcement authorities;
- Authority should be provided to the State Ethics Commission to investigate and levy penalties for failure to provide a complete and accurate affidavit;
- State Ethics Commission should have in-personam jurisdiction over out-of-state contractors by service on the Secretary of State;
- Penalties should include the ability to void the contract for ethical violations and make the offending contractor liable for damages to the state resulting from such cancellation;
- In sentencing for proceedings for serious violations of the Ethics Code (that is, criminal violations), afford Judges discretionary authority to revoke all or part of State pension benefits. (See proposed Corrupt Officials Act-2003 legislative session);<sup>23</sup>
- Penalties for any violation of the Ethics Code should include the option to recover the full amount of any financial gain with the ability to refer the matter to the Attorney General to recoup treble damages. (This financial gain would include the profit earned in a state contract which is found to have been awarded in violation of any contracting rule);
- State employees that disclose confidential information which results in the need to re-bid should be liable for penalties assessed by the Ethics Commission including the costs to the state of re-bidding;
- Whistleblower protection should be extended to prohibit retaliatory actions taken by private contractors against state or private employees for contacting the proper enforcement authority for reporting possible violations. Whistleblowers should be immune from civil liability if information is provided in good faith; and
- Removal from state service should be an available penalty for serious violations of the Code of Ethics.

#### *Education:*

##### Communication

- Each state agency should designate an ethics officer to serve as a liaison to the State Ethics Commission. Such officer shall field questions and seek guidance from the Commission, disseminate current/up-to-date information to agency employees in a timely manner (including explanation of recent enforcement actions, advisory opinions, statutory changes);
- State employees and public officials and contractors should receive a one-page summary that would outline broad ethical issues (gifts, outside employment, use of public position for financial gain, revolving door rules);
- Contact information, including phone numbers and emails, should be provided to all employees so that they know where and how to get guidance;

<sup>23</sup> <http://www.cga.state.ct.us/2003/tob/h/2003HB-05020-R00-HB.htm>

- Prior to accepting employment with the State, all prospective employees should be given a guide to the Code of Ethics. Thereafter, each new employee should receive a copy of the Code of Ethics, including information on where to go for questions and guidance. As a term of employment, each prospective employee should sign a statement acknowledging receipt of a copy of the Code and state that they have read and agree to comply with it; and
- In order to identify restricted donors under the Ethics Code's gift rules, state agencies should be required to post and periodically update a list of businesses currently doing business with or seeking to do business with the agency. Information should be provided as to how to access an up-to-date list of registered lobbyists.

#### Training

- Ethics training for potential and current state contractors should be provided;
- Ethics training for all state agencies should occur on a regular basis and should include a combination of written communication, online and/or video training, and face-to-face communication. Senior agency personnel should fully support the training with their presence and participation; and
- Training should include the rules regarding awarding state contracts, including the restrictions on communications during the contract award process. (This is further addressed in Recommendation # 3.)



## Recommendation # 3:

## IMPROVE PROFESSIONAL DEVELOPMENT OPPORTUNITIES FOR STATE EMPLOYEES

### BACKGROUND

Virtually every work group identified the lack of uniform and consistent training for public officials, state employees, current and prospective contractors and vendors as a weakness in our current system. They cited the lack of awareness of each party's respective roles and responsibilities in critical areas, such as ethics and procurement methods, as a problem. Several work groups also raised the issue of mistakes resulting from inadequate knowledge or confusion, which cause friction and are time-consuming to rectify.

### RECOMMENDATION

The Task Force recommends the following:

- A training institute should be created under the auspices of the CSPRB. This can be done in conjunction with other States, the Federal Government, municipalities or other resources;
- The institute will develop training and professional development opportunities for public officials and staff charged with procurement responsibilities. The program will educate those involved in the procurement process on proper purchasing procedures with an emphasis on ethics, fairness and consistency. This would apply to anyone engaged in buying, purchasing, renting, leasing or otherwise acquiring any supplies, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration;<sup>24</sup>
- Training will include orientation to applicable ethics standards and accountability expectations, as well as SBE/MBE contracting goals;
- The institute will support joint training initiatives with the Department of Administrative Services, the Ethics Commission as well as other state agencies, such as providing ethics training to all state employees and to potential vendors as a requirement of participation in the new DAS prequalification system;<sup>25</sup>
- It is recognized that procurement is a complex process and that the procurement field continually changes. This institute should conduct and track research on new and existing methods of procurement and training up-dates should be conducted at regular intervals;
- It is also recognized that people have different learning styles and training in a vacuum has limited value, particularly didactic training. The training should be designed to accommodate multiple learning styles and a hands-on application component should be incorporated into training modules, where possible;
- For training to impact skills and performance, participants must be able to apply their knowledge at work. The institute will assist state managers in developing on-the-job performance enhancement programs to accompany classroom or computer training;

<sup>24</sup> <http://www.acec.org/advocacy/doc/mpcfinal.doc>, page 14.

<sup>25</sup> See Investigations, Enforcement and Compliance report.

- Some states, universities and professional associations have sophisticated education and training systems that can serve as models and resources. These should be utilized, where possible;
- A library of resource materials using cutting edge training methodologies will be created and maintained;
- In addition to training procurement staff, training should be available for potential bidders and others seeking to do business with the state. This serves several purposes: first, it informs them of purchasing policies and procedures and clarifies their obligations under the state's procurement system; second, it is a tool to help them complete the requirements and prepare their responses accurately and expeditiously; and third, it helps level the playing field and promotes a more open, ethical environment; and
- The institute will provide technical assistance to state entities and municipalities for implementing contracting rules, regulations, and standards developed by the Board.

## Recommendation # 4:

**ADOPT A FALSE CLAIMS ACT  
WITH CHIEF STATE'S ATTORNEY GIVEN FULL SUBPOENA POWER &  
SHARED CIVIL INVESTIGATIVE DEMAND POWER FOR THE ATTORNEY  
GENERAL IN CONJUNCTION WITH THE  
CONTRACT STANDARDS AND PROPERTIES REVIEW BOARD <sup>26</sup>**

**BACKGROUND**

The Investigations, Enforcement and Compliance work group cited several areas of deficiency. The first concerns the potential abuse resulting from our inability to provide airtight review of each and every contract, either by submittal of false claims for payments or making material misrepresentations in the bidding process. Based on the experience of the federal government and several sister states, Connecticut may be missing an opportunity to recoup a significant amount of money lost through false claims submitted by contractors. This may be a significant drain on taxpayer dollars. While fraudulent conduct may be known to individuals who work for the contractor or are otherwise involved in the contract process, there is no incentive for such individuals to come forward. There are limited means by which the state can learn of fraudulent claims by private contractors. There is no efficient legal procedure by which the state can recover money or property improperly obtained from it by contractors and providers of goods and services.

The second area concerns the need for investigatory tools to address whistleblower complaints. General Statutes § 4-61dd, commonly known as "the whistleblower statute" was first enacted in 1979 and has been amended several times since. The statute provides for initial review of whistleblower complaints by the Auditors of Public Accounts, who then forward the complaint to the Attorney General for review and appropriate action. If the Attorney General believes there is criminal conduct, the complaint may be referred to the Chief State's Attorney. The state auditors received 99 complaints against 36 public and quasi-public agencies in fiscal year 2002-03. The current statutory language has been interpreted narrowly to limit the scope of investigations into whistleblower complaints. Whistleblower complaints may not be dealt with in a timely manner. Under the current statutory scheme—that the initial investigation be done by the Auditors who then refer it to the Attorney General, who may subsequently refer the complaint to the Chief State's Attorney—is cumbersome and inefficient. In this scenario, the statute of limitations on certain criminal offenses may have run by the time the matter is referred to the Chief State's Attorney. The Auditors and the Attorney General perform a civil review of the complaint. A criminal investigation could be jeopardized by the preliminary civil investigations required under the present statutory scheme. While the Attorney General has subpoena power to investigate whistleblower complaints, the Chief State's Attorney has no subpoena power to investigate whistleblower complaints that are referred from the Attorney General. Whistleblowers are not adequately protected from retaliatory legal action. There is unclear and/or insufficient statutory authority to broaden the scope of investigation beyond the original allegations in the whistleblower's complaint. There are insufficient investigatory tools to adequately address whistleblower complaints.

Third, there are a variety of statutes that cover the disqualification of contractors seeking public contracts. It seems that these statutes are rarely used, but provide adequate deterrence and procedures when needed.

<sup>26</sup> See Investigation, Enforcement and Compliance report.

State agencies do, however, prohibit unqualified contractors from obtaining state contracts by exercising their authority to make a responsibility determination prior to the awarding of a contract. This determination is made during the selection process by the contracting agency with the assistance of the Office of the Attorney General and applies only to the contract at issue. A prequalification of contractors prior to bidding was established in Public Act 03-215, as amended by Public Act 04-141. This system begins October 1, 2004, and will be administered by the Department of Administrative Services. The law requires that certain contractors prequalify to bid on public building construction contracts estimated to cost more than \$500,000. The prequalification system administered by the Department of Administrative Services has limited applicability. It does not apply to subcontractors unless they are in a prime contract relationship with the state. It does not apply to projects by quasi-public agencies and all state units of higher education. Under the existing prequalification system, a subcontractor that cannot meet the prequalification standards to work as a prime contractor can still work on state projects under a prequalified general contractor. A general contractor that cannot meet the prequalification standards under the Department of Administrative Services may be able to compete for state building construction contracts exempted by statute with a higher education unit or a quasi-public agency. In regards to disqualifying a contractor from a specific contract, there are no uniform procedures that agencies must follow for determining that a contractor is responsible and qualified. This situation can create confusion for those seeking and those administering contracts. In addition, several procurement-related statutes do not mandate that contracts that are entered into illegally are automatically voidable. This may result in protracted litigation and costs to the state to terminate an illegal contract. There is unclear and/or insufficient statutory authority and administrative procedures.

## RECOMMENDATIONS

The Task Force recommends the following:

### *False Claims for State Money or Property*

- Adopt legislation for a state False Claims Act to impose civil liability on any person or entity that submits or causes the submission of a false claim for state money or property. The act should be modeled on the false claims statutes enacted by the federal government and several of the states, including California, Illinois, Delaware and Massachusetts;
- A False Claims Act should be comprehensive enough to cover (1) any request or demand for money or property or services; (2) withholding of information in order to cause the state to excuse the individual from making a payment or providing goods or services that the individual would otherwise have to make or provide; (3) kickbacks or bribes that are included in an individual's otherwise legitimate claim for payment, and (4) material misrepresentations;
- Allow an individual who has first-hand knowledge of fraud to initiate a lawsuit under the False Claims Act for recovery of state money or property;
- Provide for coordination between the Attorney General and the Chief State's Attorney in the review of all false claims allegations and lawsuits filed by private individuals;
- The state should have the authority to take over a false claims lawsuit from the private individual and become the primary plaintiff. The state should also be able to initiate a false claims suit;
- Provide the Chairperson of the CSPRB with the authority to issue a Civil Investigative Demand (CID) on behalf of the Attorney General to investigate allegations of false claims;
- Provide the Chief State's Attorney with subpoena power to investigate allegations of false claims;

- Exempt false claims suits from the strictures of double jeopardy and collateral estoppel in order to permit, where appropriate, both criminal and civil actions for the same unlawful conduct;
- Provide for an award of treble damages in a false claim suit in addition to a monetary penalty;
- Provide for a percentage of the damages recovered to be awarded to the private individual who initiated the suit. In addition, the individual should be reimbursed for costs and attorney's fees. The state should also be awarded costs;
- A portion of the damages awarded should go to the state to be put in a fund for future prosecution of false claims cases;
- Allow the courts to assess legal fees against any individual who brings a frivolous false claims suit;
- Enact a criminal false claims statute modeled on the federal law (18 U.S.C.A. § 287) to impose criminal liability on those who intentionally seek to defraud the state by submitting false claims. Provide the Chief State's Attorney with subpoena power to investigate such criminal conduct; and
- Add a section to the prequalification process requiring contractors to disclose findings against them of civil or criminal liability under the false claims acts of any state or the federal government; Provide for a ban on future contracts with Connecticut agencies where a contractor has been held liable for filing a false claim.

#### *Whistle blower tools*

Amend the whistleblower statute (CGS§ 4-61dd) to:

- Enable the Auditors or Attorney General to inform Chairperson of the CSPRB of information concerning a whistleblower complaint when immediate action to void a bid process or terminate a contract is deemed in the best interests of the state;
- Require that the Auditors promptly refer all whistleblower complaints to both the Attorney General and the Chief State's Attorney; and, where the Auditors have performed an investigation, to report their findings and any recommendations as well;
- Direct the Auditors of Public Accounts, the Attorney General and the Chief State's Attorney to establish a protocol to coordinate and prioritize their investigations;
- Permit the Attorney General and the Chief State's Attorney to conduct investigations into whistleblower complaints with the same powers and authority, including subpoena power;
- Permit the Attorney General and the Chief State's Attorney to expand the scope of investigations into whistleblower complaints beyond the allegations or information transmitted in the complaint when appropriate based on facts discovered during the investigation;
- Provide immunity from civil actions for whistleblower complaints made in good faith; and
- Examine whether other protections should be available for those filing whistleblower complaints.

#### *Disqualification and Suspension of Contractors*

- The state's prequalification system, administered by the Department of Administrative Services, should be amended to apply to all state building project subcontractors and to all state building projects including those by quasi-public agencies and all state units of higher education. This recommendation should be phased in over a one year period;

- The application for the Department of Administrative Services' prequalification system should include the requirement that applicants disclose any suspensions, disciplinary action and/or civil actions taken against the applicant by any federal or state agency or local government. This language should be developed with the assistance of and reviewed by the Office of the Attorney General;
- Uniform procedures for contractor responsibility determinations should be developed by all state contracting agencies in consultation with the Department of Administrative Services and the Office of the Attorney General. These procedures should be published by each agency and should include procedures for protest. These procedures should also be reviewed for compliance by an oversight board. Agencies should review and consider the Department of Transportation's Bidding and Award Manual when formulating their procedures;
- All procurement related statutes should be amended to mandate that contracts entered into in violation of state statutes and/or regulations shall be voidable; and
- An ethics in government training program for all state employees and state vendors should be developed in conjunction with the State Ethics Commission and distributed to all agencies. (This is further described in Recommendation # 2 of this report).

## Recommendation # 5:

**IMPLEMENT A SINGLE PURCHASING PORTAL<sup>27</sup>****BACKGROUND**

The State of Connecticut does not have a centralized one-stop location for posting of all contracting and procurement information including bid/request for proposal opportunities and contracts within the State, making it difficult for individuals and firms to do business with the state.

Some agencies choose to post their bids on the Department of Administrative Service, eProcurement website through the bid posting service while others do not. Those agencies that use the service get their bid notice into the hands of a much larger pool of vendors thus promoting competition and an open, fair chance for vendors to win contracts. By not using the bid posting service, agencies give vendors no choice but to search multiple agency websites for bid notices or scour classified ads in various newspapers. This is an investment in time and patience, exacerbated by the fact that the information may not even be posted by the agency. Without having a single portal for vendors to utilize, it is possible that only few preferred vendors will be notified of a bid opportunity.

The same is true for agencies searching for state contracts. Some contracts are listed on the eProcurement site and some are not. Agencies will find all Department of Administrative Services awarded contracts but not those awarded by other agencies. Customers searching for a valid state contract may also need to search multiple websites to find out if a state contract is in place for the product or service they need. Customers may unknowingly make non-contract purchases when, in fact, there is an existing state contract. Even though DAS has the infrastructure to support hosting all state bid and contract documents on behalf of all state agencies, those agencies are not required to do so.

The lack of a central portal also leads to a public perception that the state does not have an open contracting process equally accessible to all participants.

**RECOMMENDATION**

The Task Force recommends the following:

- The CSPRB should work with the Department of Administrative Services to create a single statewide purchasing portal;
- A centralized searchable website should be created for posting a summary of all contracting information for all state and municipal solicitations with links to the appropriate source;
- All state agencies will be mandated to post relevant information in this fashion; and
- The site should include the *State Procurement & Contracting Manual*, all approved contracting processes, and the results of all solicitations (for example, posting of contract awards).<sup>28</sup>

<sup>27</sup> See Procurement report.

<sup>28</sup> See Construction Procedures report.

## Recommendation # 6:

## RESTRICT OR ELIMINATE THE LEGISLATURE'S AUTHORITY TO ENACT SPECIAL LEGISLATION

### BACKGROUND

During the past few years, there have been allegations of selection irregularities with the state bidding and selection processes. Some facts should be noted here. First, it is clear there has been confusion regarding the competitive bidding process and the competitive proposal selection process.

The vast majority of the projects in Department of Public Works (DPW) are subject to the low bid process outlined in CGS§ 4b-91. This is a competitive, sealed bid process that entails an invitation to bid, public notice, bid opening, bid acceptance and bid evaluation. This is the process used to hire construction firms for traditional Design-Bid-Build projects, where there are two separate contracts, the first for architects and engineering services to design the project and the second for construction of the project according to the design.

#### *Hiring formal consulting services (over \$ 50,000)*

The procurement process to hire the architects and engineering for design contracts is addressed under CGS§ 4b-58 which establishes a five-member selection panel to conduct the competitive proposal process. A Qualifications Based Selection (QBS) is conducted. Contracts for architects and engineers are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price. Under QBS competitive procurement procedures, price quotations are not a consideration in the selection process. There are seven basic steps under QBS:

1. Public solicitation for architectural and engineering services
2. Submission of an annual statement of qualifications and supplemental statements of ability to design specific projects for which public announcements were made
3. Evaluation of both the annual and project-specific statements
4. Development of a short-list of at least three submitting firms in order to conduct interview with them
5. Interviews with the firms
6. Ranking of at least three of the most qualified firms
7. Negotiation of cost with the top ranked firm<sup>29</sup>

Like low bid, there is public notice and a competitive process for selection, but the price is negotiated. Research has shown this is a generally known and widely accepted method of selection of design professionals.

#### *Hiring contractors for formal projects (over \$ 500,000)*

Pursuant to CGS§ 4b-91 as amended by PA 03-215 and PA 04-141, the lowest responsible and qualified bidder is hired for the construction of formal projects. Defined in CGS§ 4b-92 as modified by the two Public Acts, this is the bidder who is prequalified under the Department of Administrative Services system, whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to faithful performance of the work. Selection is based on objective criteria, such as past performance,

<sup>29</sup> *The Brooks Act: How to use Qualifications Based Selection*, Texas Society of Architects, American Council of Engineering, 2004



financial condition skills and availability of personnel to undertake the project. This accounts for over 90 % of the Department of Public Works' current work.

Nevertheless, despite the preference by many parties to use this model, there is a substantial body of knowledge and experience regarding the risk and limitations of relying on low price as the primary selection methodology.

#### *Design Build*

A second type of project delivery method is design build, referenced in CGS§ 4b-24 as modified by the Public Acts. This generally refers to hiring a single contractor on a total cost basis for design and construction. The public acts created a two-panel system to hire a design build developer. The hiring of a design build developer usually follows a QBS process, like consulting services, or a Best Value selection. Under a QBS process, the project cost is established by the State in the RFP. The total cost consists of all design build design costs plus the construction costs without any exceptions to the RFP requirements. Qualitative criteria, such as aesthetics, design innovation, program compliance, site planning quality, technical specification compliance, schedule compliance and so forth are the ONLY final selection criteria factors. The total cost is not a criteria factor.

Under a Best Value procurement process, cost is a consideration, although it does not drive the section decision. It is added as a weighted factor in the selection process, generally accounting for 25- 30 % of the rating. The total cost of the design and the construction plus various qualitative factors are considered.

#### *Special Legislation*

For the most part, the projects that have been subject to possible steering and inappropriate influence have been outside the state's standard lowest responsible bid process. These are known as "fast track" projects, which are exempt from CGS§ 4b-91. Projects are added by special act, approvals by DPW, the Attorney General and the State Properties Review Board (SPRB) are required, and an expedited process is used where competitive bidding procedures do not apply.

Some of these followed the Design Bid Build approach, some were Design Build projects and some utilized Construction Management. Despite the capacity to waive competitive bidding procedures, in most cases a competitive selection process was used to hire either architects and engineers, construction firms, design build developers, or construction managers. It should also be noted that together, these projects account for a small percentage of the volume of DPW work in terms of number of projects, but a significant percentage of the costs.<sup>30</sup>

The only way to gain a CGS§ 4b-91 exemption is through special legislative action. Public Acts 03-215 and 04-141 added SPRB review of such projects as well as the requirement to certify to the Government Administration and Elections (GA & E) Committee that the projects were of a sufficient emergency nature to require waiver of the normal competitive sealed bidding or competitive proposal procedures. This may make it more difficult to gain such an exemption. These acts also establish a panel procedure for selecting any fast track bidder or proposer. Adding further checks and balances to the normal non-special legislation bidding and selection processes does not focus on this issue, but has a by-product--it

<sup>30</sup> Summary chart *Construction, Design/Build and Special Legislation Contracts Awarded from 1995-2003*, prepared by DPW, Apr 2004.

does risk creating delay, which may then put the clients in the position of seeking exemptions to the normal process.<sup>31</sup>

## RECOMMENDATION

The Task Force recommends the following:

- Adding a review layer and approval or disapproval by the newly constituted CSPRB, as described in Recommendation # 1, will provide an additional check and balance;
- However, as these special legislation projects account for the majority of the problems, the optimal solution is for the legislature to not enact special legislation, unless circumstances absolutely warrant such action.

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<sup>31</sup> See Construction Procedures report.

## Recommendation # 7:

**CONVENE A FOLLOW-UP WORK GROUP TO DEVELOP A DETAILED PLAN FOR  
SUBMITTAL TO THE LEGISLATURE**

<b>Sep – Nov 2004</b>	As a precursor to the establishment of a new state Contract Standards & Properties Review Board, a work group should be designated to conduct a comprehensive review of all existing state procurement and contract statutes.
<b>Nov- Jan 2005</b>	The workgroup shall draft a new, unified <i>State Procurement &amp; Contracting Statute</i> . This new statute should be applicable to all types of selections, purchases and procurements for all state entities and municipalities and shall address Recommendations # 1 through 6 of this report.
<b>Sep 2005</b>	The Task Force will reconvene for a status report on implementation of the approved recommendations.

## CONCLUSION

Let us preface our closing remarks by saying in the interest of full disclosure and our commitment to open government, all the work group reports are available in the appendix as we received them. Their appendices are available as noted or under separate cover. Also included in the appendix are comments received from various Task Force members on the draft final report. In our effort to seek consensus, we incorporated input, where possible; items where there was substantive disagreement we include as areas to revisit and address in the future.

Our goal was to view state contracting reform strategically. In an effort to identify and address critical issues, we made some judgements regarding what to include, or not include, in this report. We note, and share, four concerns raised by the work groups that provide a framework for understanding their reports and for moving forward. The first is the concern voiced about avoiding another "unfunded mandate" which can deaden the best-intentioned initiative. The increased staffing, should expanded responsibilities and areas of authority be implemented, is critical.

Second, we take note of some of the specific statutory or process changes required to begin implementing some of the work groups' good ideas. Rather than endorse a particular change or improvement, we viewed these ideas as being under the purview of the new unified procurement code and specifically addressed in the preparation of statewide contracting standards. Thus while we had a broad focus, we would suggest many of the work groups' suggestions can, and should, move forward on their own independently, should the report not be adopted in its entirety.

Third, it became immediately clear that an improved system for gathering data and sharing useful information is required to better inform our decisions. We came to learn that pockets of information exist if one knows where to look and who to ask. With the current system of decentralization of both responsibility and authority, for example, it is difficult to determine how many and what type of state contracts currently exist statewide, their dollar amount, the list of client agencies, descriptions of services, names of vendors, and evaluation of the vendors' performance. Some of the reporting mechanisms are burdensome, information is not readily accessible, and the information is not always used to drive decisions. This is a critical issue that must be addressed, should the report recommendations be implemented.

A fourth topic concerns our desire to build from existing vehicles, wherever possible. This is a far greater challenge than it may initially appear to be. It requires recognition of the interdependence of various agencies charged with doing similar work but having different levels of authority and, notably, different resources.

In conclusion, we recognize this was a very brief window into exploration of critical issues affecting state government and the people we serve. Despite this, it became apparent that many people have been doing a great deal of thinking about this for the past few years. We appreciate those who took the time to read, ask questions and provide input. We believe we have spoken to the critical issues, and in the process of doing so, have raised many others. And we realize that while not all task force members or readers may agree with all recommendations, we recognize the unique opportunity we were given to reaffirm our trust in our government and to promote healing. We hope this report will set the stage for the next level of scrutiny and thoughtful dialogue.

## APPENDIX

- A. Construction Procedures Work Group Report
  - B. Ethics and Integrity Work Group Report
  - C. Investigations, Enforcement and Compliance Work Group Report
  - D. Leasing Work Group Report
  - E. Personal Service Agreements Work Group Report
  - F. Procurement Work Group Report
  - G. Property Management Work Group Report
  - H. Comments on the Task Force draft final report from Task Force members
  - I. Summary chart *Construction, Design/Build and Special Legislation Contracts Awarded from 1995-2003*, prepared by DPW, Apr 2004
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